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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

No. 678.

SMOOT SAND AND GRAVEL CORPORATION, *Petitioner*,

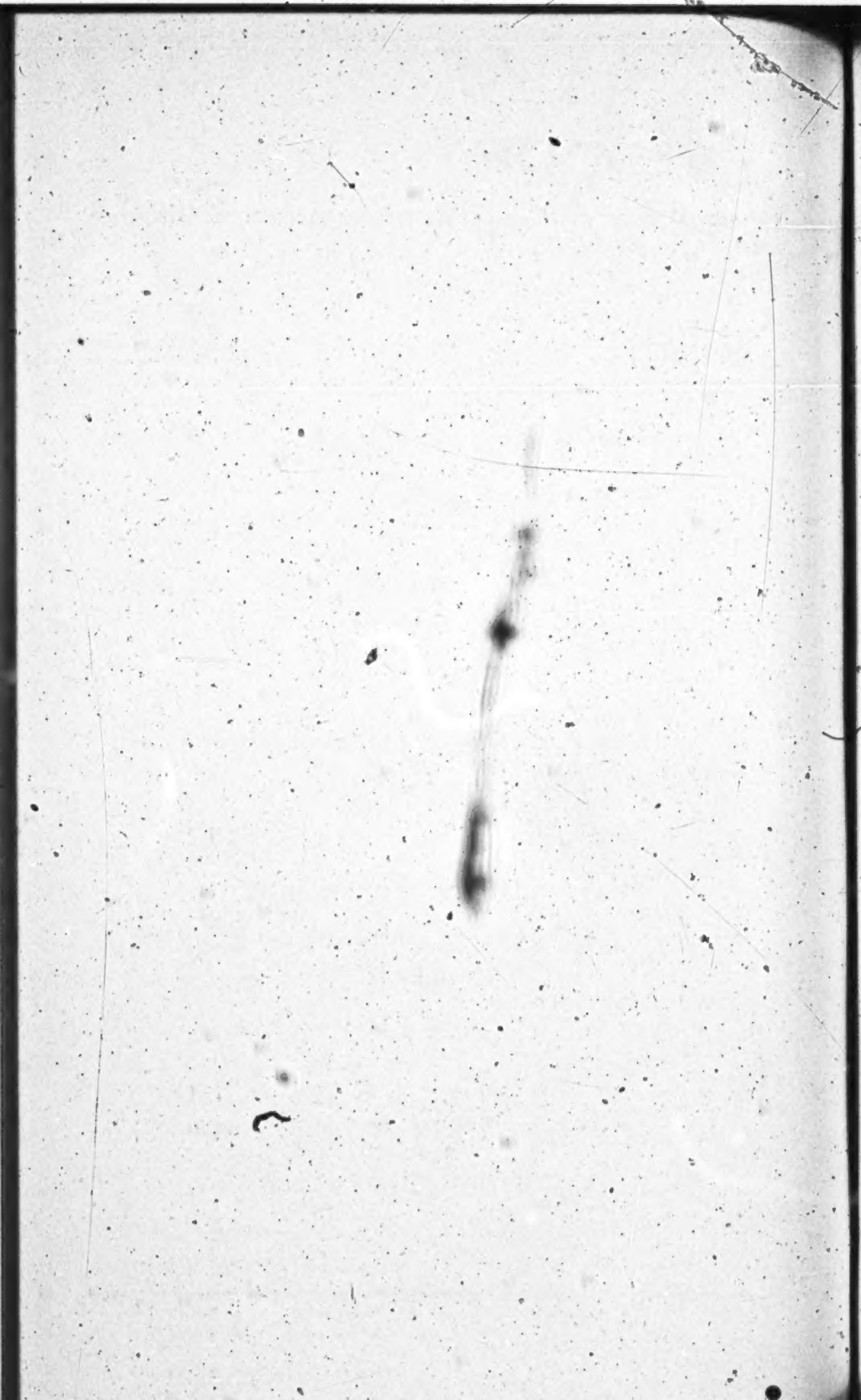
vs.

WASHINGTON AIRPORT, INCORPORATED, *Respondent*.

MOTION OF RESPONDENT TO ADVANCE CASE FOR HEARING.

LOUIS TITUS,
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.



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Comes now the respondent in the above-entitled cause, and moves that this case be advanced for early hearing, and in support of said motion makes the following brief statement of the matters involved and the reasons relied upon for the advancement:

QUESTION PRESENTED.

The question presented in this case is whether the boundary line between the District of Columbia and the Commonwealth of Virginia is at high water mark

or at low water mark on the Virginia side of the Potomac River.

REASONS WHY CASE SHOULD BE ADVANCED.

There is a serious and honest conflict between the riparian owners on the Virginia shore of the Potomac River and the United States Government as to whether the boundary line is the low water mark or the high water mark on the southerly shore of the river. The United States is interested in many activities in connection with the Potomac River, and particularly in the southern, or Virginia, shore of the river. This suit is of special interest upon that question for the reason that the petitioner at the time the suit was brought was carrying on the work of construction complained of under a contract entered into with the Secretary of Agriculture, on behalf of the United States, pursuant to the Act of May 23, 1928, c. 719, 45 Stat. 721, entitled "An Act To authorize and direct the survey, construction, and maintenance of a memorial highway to connect the Arlington Memorial Bridge across the Potomac River at Washington."

The work of construction of the George Washington Memorial Highway is actually in progress at the present time. This highway as projected will, at a number of points, pass over the tide lands, the ownership of which is in dispute. If the boundary line between the District of Columbia and the State of Virginia be the high water mark, the tide land belongs to the United States, and there will be no necessity for the condemnation or purchase of such land by the Government. If, on the other hand, the

boundary be the low water mark, then the tide land belongs to the owners of the adjacent upland, in which event whatever tide lands are required for the Government project must be acquired either by condemnation or otherwise.

The National Capital Park and Planning Commission also is interested in the speedy determination of the question involved in this case. Under various Acts of Congress, this Commission is engaged in acquiring and constructing a system of parkways adjacent to the George Washington Memorial Highway. Until this question be determined, both the work of the Commission, and the work of constructing the National Highway will be impeded. It is the purpose of Congress, as evidenced in the various statutes it has passed, that both the Highway and the Parkways be completed in time for the Bicentennial Celebration to be held in 1932. It is, therefore, a matter of great public importance that there be a prompt determination of the question presented in this case.

I am authorized to state that the petitioner joins in requesting that this motion be granted.

WHEREFORE, respondent respectfully petitions this Court that the case be advanced upon the calendar and assigned for hearing at an early date.

Respectfully submitted,

LOUIS TITUS,
Attorney for Respondent.

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CONSENT OF RESPONDENT TO GRANTING OF PETITION FOR CERTIORARI.

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PRELIMINARY STATEMENT.

While, under ordinary circumstances, a respondent opposes the granting of a petition for certiorari, nevertheless, the circumstances are such in this case that the respondent does not feel justified in filing such an opposition. The reasons for this will hereinafter appear.

THE QUESTION PRESENTED.

The question presented in this case is whether the boundary line between the District of Columbia and the Commonwealth of Virginia is at high water mark or at low water mark on the Virginia side of the Potomac River.

REASONS WHY RESPONDENT CONSENTS TO GRANTING WRIT.

Numerous cases have arisen in the courts in which the boundary line between the District of Columbia and the State of Virginia has been in question. It is conceded by every one that the boundary is either the high water mark or the low water mark on the Virginia side of the Potomac, but the true boundary has never been fixed beyond dispute by a decision of this Court. The result is never-ending conflict concerning the land between high and low water marks on the southern side of the River. These conflicts arise in many different ways:

1. The question of police jurisdiction over the disputed territory;

2. The question of the right of the State of Virginia to levy taxes on the disputed territory;

3. The question of the ownership of this tide land, for if the boundary of the District of Columbia be the high water mark on the Virginia side, then apparently the Government would be the owner of the tide land; but if the boundary be the low water mark, then the tide land belongs to the owners of the adjoining upland;

4. The question of access to the navigable part

of the Potomac River, and the right to build wharves and docks therein is affected by the ownership of the tide land, for the reason that certain officials of the Government dispute the right of the owners of the upland to cross the tide land in order to reach the navigable waters of the Potomac;

5. The question affects the program of the National Park and Planning Commission with reference to its parking project on the southerly shore of the Potomac, and, to a certain extent, affects the Government's project of constructing the George Washington Memorial Highway along the southerly shore of the Potomac. Under various statutes of Congress, the Parking and Planning Commission for the District of Columbia is planning a system of parks on the Virginia shore of the Potomac. The Secretary of Agriculture is actually engaged in constructing the Memorial Highway. At places, these parks and this highway occupy the tide lands on the south shore of the Potomac. The ownership of the tide lands being in dispute, neither the Government nor the owners of the adjoining upland can be certain of their rights, until the boundary be finally determined. From every standpoint, so far as the public's interest is concerned, it is desirable that this boundary line should be finally settled. From the standpoint of the owners of the upland property on the Virginia side of the Potomac, it is also desirable that the boundary should be settled as a means of preventing interminable litigation which will inevitably ensue unless it be settled.

6. As pointed out in the petition for certiorari on file herein, there is a clear conflict of decisions between the Court of Appeals of the District of Columbia and the Circuit Court of Appeals for the 4th Circuit.

For the foregoing reasons, and for the other reasons which have been advanced in the petition for certiorari, respondent believes that the petition should be granted.

LOUIS TITUS,
Attorney for Respondent.